

Rainbow Elec. Co. Inc. of N.Y. v Harlem Green LLC

2021 NY Slip Op 32741(U)

November 10, 2021

Supreme Court, New York County

Docket Number: 452277/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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RAINBOW ELECTRIC COMPANY INC OF NEW YORK,

Plaintiff,

- v -

HARLEM GREEN LLC, MIKOT CONSTRUCTION INC.,
JANUS PARTNERS, LLC, JANUS MANAGEMENT INC.,
LENDLEASE (US) CONSTRUCTION, INC.

Defendants.

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INDEX NO. 452277/2021

MOTION DATE 09/29/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Upon the foregoing documents, it is

The following read on defendants, JANUS PARTNERS LLC and JANUS MANAGEMENT, INC., pre-answer motion to dismiss the allegedly verified complaint dated January 19, 2021. A summons and complaint were filed and defendants HARLEM GREEN, LLC, and MIKOT CONSTRUCTION, INC. filed a verified answer with counterclaims on April 30, 2021. A stipulation of discontinuance has been submitted for LENDLEASE (US) CONSTRUCTION, INC. (see NYSCEF Doc. No. 7).

The complaint sounds in breach of contract that alleges nonpayment of \$110,484, in relation to electrical work done at The Malt House, 461 W. 126th Street, New York, New York. HARLEM GREEN LLC counterclaims for i) damages in the amount of \$250,000, to retain third-party contractors to remedy, repair, replace, and complete the defective work previously attempted by Rainbow; and ii) to declare plaintiff's mechanic's lien, filed on or about October, 2020, void pursuant to Lien Law 39.

A review of the alleged verified complaint does not reveal it to be verified by anyone with actual knowledge of the circumstances of this litigation.

Defendants JANUS PARTNERS LLC and JANUS MANAGEMENT INC do not specify which CPLR Section to dismiss in their notice of motion (see NYSCEF Doc. No. 13).

“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (see *Leon v. Martinez*, 84 N.Y.2d 83 [1994]).

The affidavit of Scott Metzner, principal of defendants, Harlem Green LLC, Janus Partners LLC, and Janus Management, Inc. affirms,

“[p]laintiff commenced work on the project on or about July 2018, and abandoned the project on or about September 29, 2020. Plaintiff’s breaches include several material provisions of the agreement by installing defective, deficient and incomplete work. On September 29, 2020, plaintiff did not appear at a meeting that was scheduled to go through the August 20, 2020 application submission and confirm the amount due and owing to plaintiff. On or about October 7, 2020, a Notice of Default was sent to plaintiff advising plaintiff of its ongoing breach and abandonment of the project, giving forty-eight (48) hours for plaintiff to affect a remedy of the deficient work. Rather than remediate the deficiencies, on or about October 14, 2020, plaintiff, through counsel, sent a demand letter for payment in full. On or about October 26, 2020, another letter of correspondence was sent to plaintiff advising it of the numerous examples of plaintiff’s defective work, the necessity to engage self-help and the termination of the plaintiff for its abandonment. Plaintiff has not returned to the property to complete or remedy the defective work on the project. Consequently, plaintiff’s breach of the agreement has caused significant and ongoing financial damage to (sic) project since Harlem Green was obliged to hire third-party contractors in order to finish plaintiff’s incomplete and defective work” (see NYSCEF Doc. No. 16 Pars. 7, 8, 11 – 15).

A further review of Scott Metzner’s affidavit states, “Harlem Green entered into a written agreement with Mikot Construction Inc. to act as General Contractor in the renovation and expansion of an existing building located on the property (the ‘project’). Mikot entered into a

written agreement with plaintiff for certain work in connection with electrical, fire alarm, auxiliary radio communication systems, and related work” (see NYSCEF Doc. No. 16 Pars. 4 – 5).

The affirmation of defendants’ attorney Matthew Guber affirms, “[p]laintiff’s suit arises from allegations that it was not paid for certain electrical work implemented on the project. Consequently, the cause of action sounds in breach of contract. As a consequence, it should be dismissed because the Janus Entities have no privity of contract with the plaintiff” (see NYSCEF Doc. No. 26 Pars. 3, 26). Defendant Janus Entities submit the contract which shows an agreement between Mikot Construction Inc. as General Contractor, and Rainbow Electric Co. Inc. as Subcontractor (see NYSCEF Doc. No. 28).

Plaintiff’s do not submit an affidavit from anyone with facts or knowledge about this litigation. Further, the contract submitted does not name JANUS PARTNERS LLC nor JANUS MANAGEMENT INC.

ORDERED that the motion of defendants JANUS PARTNERS LLC and JANUS MANAGEMENT INC to dismiss the complaint herein is GRANTED and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

11/10/2021
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE